

citations to two other carriers for unfair trade practices. The companies had listed their agent telephone number and street address under a competitor's name. Additionally, one carrier was cited for entering into agency agreements involving radio common carriers and other entities. These citations highlight the close attention the LPSC pays to CMRS providers in Louisiana to ensure that the playing field is level and that both competitors and ratepayers are treated fairly.

8. The LPSC Reviews Proposed Mergers Among CMRS Providers To Ensure That They Will Not Hinder Competition Or Harm Louisiana Citizens.

The Louisiana Commission has issued three General Orders which require any common carrier or utility subject to LPSC jurisdiction to obtain approval prior to purchase, sale, or merger with another regulated entity. *See* LPSC General Order (Mar. 18, 1994), attached hereto as exhibit 43; LPSC General Order (Oct. 28, 1968), attached hereto as exhibit 44; LPSC General Order (June 16, 1954), attached hereto as exhibit 45. *See also Bowie v. Louisiana Pub. Serv. Comm.*, 627 So. 2d 164 (La. 1993). Pursuant to that authority, the LPSC reviewed approximately 13 mergers among CMRS providers between 1989 and 1993. These mergers included transactions involving major CMRS providers in Louisiana -- BellSouth Mobility merged with LIN Cellular and consolidated two subsidiaries, New Orleans CGSA and Baton Rouge CGSA, McCaw Cellular purchased Alexandria Cellular Licensing Corp., and Century Telephone Enterprises purchased Chatham Telephone.

Not only do these mergers require a substantial amount of LPSC time to review and evaluate their potential effects, the fact that the Louisiana CMRS market has experienced 13 mergers over a 4 year period indicates that the Louisiana CMRS marketplace is becoming consolidated in the hands of a few large companies. On the surface, at least, this is not

indicative of expanding competition. It is possible, however, that some of these mergers could benefit Louisiana cellular subscribers. For instance, mergers could result in broader ranges of coverage by individual companies, allowing the companies to eliminate or reduce roaming charges. As will be discussed in more detail in section III.C.4-6, *infra*, of this Petition, additional study is required to accurately assess the consequences of this market consolidation and the protections required to address any market imperfections created by the consolidation. The LPSC recently opened a docket in order to undertake precisely this type of study and evaluation. *See* exhibit 1, LPSC Minutes (July 13, 1994). The LPSC is filing this Petition to ensure that whatever these evaluations might reveal, the LPSC will retain the tools necessary to address the situation, if affirmative action is required.

The LPSC's full range of regulatory activities concerning CMRS providers demonstrates, clearly, that it would be unwise to split regulatory authority over CMRS providers in Louisiana between the FCC and the LPSC based on whether a particular regulation is rate or non-rate. In order to effectively protect both consumers and competitors in the Louisiana CMRS market until it becomes fully competitive, the LPSC must have the full panoply of regulatory tools available to it. In this way, the LPSC can utilize the regulatory devices necessary to manage the marketplace based on conditions existing in Louisiana. Entrusting the LPSC with rate regulatory authority does not mean, necessarily, that the LPSC will exercise that rate regulatory authority in an extensive or non-market-oriented fashion. In fact, Louisiana generally has followed the FCC's policy of forbearance except when intervention is required to remedy specific instances of rate gouging or discriminatory rates. It is extremely important, however, for the LPSC to have the authority to step in in this fashion and exercise rate regulatory

authority -- the CMRS providers' awareness that the LPSC does have the authority to act with regard to their rates deters them from exceeding the bounds of just and reasonable rates. The LPSC functions, in essence, as a substitute for competition that would normally prevent competitors from charging excessive prices in markets characterized by aggressive competition and low entry barriers. The FCC is not proximate enough, nor does it have adequate resources, to monitor CMRS providers throughout 50 States closely enough to deter rate gouging or remedy isolated instances of discriminatory rates. Thus, until the CMRS market in Louisiana becomes more competitive, the LPSC should be allowed to retain full authority over CMRS, including the authority to regulate rates.

B. The CMRS Market In Louisiana Is Not Fully Competitive And CMRS Providers May Be Charging Unjust And Unreasonable Rates.

1. CMRS Providers

a. Cellular Telephone Service Providers

Approximately 18 entities currently provide cellular service in Louisiana. Seven of these 18 providers are resellers and one functions as a reseller in some territories and as a licensed provider in one territory. These providers are:

- (1) Access One
6132 Shawnee Street
Bay St. Louis, Mississippi 39525
Reseller
- (2) BellSouth Mobility -- through:
 - (a) Acadiana Cellular General Partnership
 - (b) Lafayette MSA Limited Partnership
 - (c) Louisiana CGSA, Inc.

- (d) Baton Rouge MSA, Ltd. Partnership
- (3) Cellular Express, Inc.
Reseller
- (4) Cellularfone, Inc.
Reseller
- (5) Centennial Cellular Corp. -- through:
 - (a) Alexandria Cellular License Corporation
d/b/a Cellular One of Alexandria
(Apr. 1, 1988)
 - (b) Centennial Beauregard Cellular
 - (c) Centennial Caldwell Cellular
(Mid South Cellular)
 - (d) Centennial DeSoto Cellular
(Mid South Cellular)
 - (e) Centennial Hammond Cellular/RSA
Cellular Company
 - (f) Iberia Cellular
Centennial Beauregard Cellular
 - (g) TriCoastal Cellular III
d/b/a Cellular One
- (6) Century Telephone Enterprises, Inc.
d/b/a Century Cellunet
(July 1, 1987)
 - (a) Century Cellunet of Alexandria
- (7) Eclipse Maritime, Inc.
Reseller
- (8) GTE Mobilnet
Reseller
- (9) Kaplan Telephone Company

d/b/a Pace Communications

- (10) LA-1 Joint Venture
- (11) Lake Charles CellTelco
d/b/a Cellular One
(Western Cellular Management, Inc.)
(Aug. 12, 1987)
- (12) McCaw Cellular Communications, Inc.
d/b/a Cellular One
(Jan. 5, 1987)
- (13) Mercury Cellular
(Apr. 14, 1989)
- (14) Mobiletel, Inc.
- (15) Motorola Cellular Service, Inc.
- (16) Radiofone, Inc.
Reseller & Primary
(Sept. 24, 1984)
- (a) Baton Rouge Cellular Telephone
- (17) Shared Technologies, Inc.
d/b/a Shared Technologies Cellular
Reseller
- (18) U.S. Osiris Corporation
d/b/a American Roaming Network
Reseller

b. Radio Common Carriers

The following RCC's currently operate in Louisiana:⁵

- (1) Acadian Ambulance Service, Inc.
(Dec. 23, 1993)

5 In addition, many of the local exchange carriers provide RCC services.

- (2) Alco Telephone Answer-Ring of Greenville, Ms. Inc.
(June 21, 1979)
- (3) Answerphone of Natchez, Inc.
d/b/a Metro Communication Service
(Jan. 17, 1979)
- (4) Arch Southeast Communications, Inc.
(Nov. 15, 1988)
- (5) Cameron Telephone
(Mercury Cellular Tele. Co.)
(Apr. 4, 1989)
- (6) Century Paging, Inc.,
d/b/a Century Cellunet
- (7) Coastal Answering Service, Inc.
(Sept. 9, 1972)
- (8) DeRidder Mobilfone, Inc.
(June 16, 1977)
- (9) Floyd E. Dugas d/b/a Jennings Mobilfone
(Oct. 18, 1968)
- (10) G. M. Services
(Dec. 12, 1988)
- (11) Cranford L. Jordan
d/b/a CLJ Paging
(Nov. 8, 1984)
- (12) Lafourche Telephone Company, Inc.
(Sept. 30, 1968)
- (13) Lavergne's Telephone Answering Service
(Sept. 30, 1968)
- (14) Mobilcomm of the Midsouth, Inc.
(Dec. 21, 1992)
- (15) Mobilfone of Baton Rouge

- (16) Morgan City Mobilfone
- (17) New Orleans Mobilfone
(Div. of Business Communications, Inc.)
(Sept. 30, 1968)
- (18) Radio and Communications Consultants, Inc.
(July 17, 1981)
- (19) Radiofone, Inc.
(Sept. 30, 1968)
- (20) Radiofone of Morgan City, Inc.
(Sept. 21, 1989)
- (21) C. L. Sanson
(Mar. 26, 1984)
- (22) Selective Radio Paging, Inc.
(Sept. 30, 1968)
- (23) Southern Message Service, Inc.
(Sept. 30, 1968)
- (24) Vermilion Mobil, Inc.
(Nov. 25, 1969)

**2. The Current Industry Structure Of Duopoly
Results In Rates Which May Be Unjust And
Unreasonable.**

Under rules promulgated by the FCC, only two cellular systems are authorized to provide service in any given market. These markets are known as Metropolitan Statistical Areas ("MSAs") and Rural Service Area ("RSA"). One block of frequencies in each MSA or RSA is set aside for the local exchange company (*i.e.*, the wireline telephone carrier in that area) and the other frequency is made available to a non-wireline company. The FCC has recognized the potential anticompetitive effects of this duopoly:

The fact that there are only two carriers raises the question of the extent to which these duopoly providers are able to reach an implicit or explicit agreement not to

compete vigorously with one another and thus to elevate rates above their competitive levels. Standard principles of economics indicate that duopolists may be able to sustain what is in effect a shared monopoly -- with the attendant elevated prices -- either by tacitly agreeing not to price aggressively or by restricting the amount or rate of investment in new capacity.

See Second Report & Order, In the Matter of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, ¶ 146, p. 60. (Released Mar. 7, 1994) ("Second Report & Order").

The obvious result, at least, is that customers have only two options to choose from when deciding what company will provide cellular service.

In Louisiana, the LPSC initially believed that the existence of more than one carrier would prevent services from being priced in an unjust or unreasonable manner. It was believed that the existence of this minimal level of competition would obviate the necessity for rate regulatory control. The Louisiana Commission is no longer convinced that the existence of this minimum level of competition is adequate to protect ratepayers. For this reason, at its July, 1994 business meeting, the Louisiana Commission opened a Docket to investigate whether the rates of cellular carriers should be regulated on a rate base/rate of return basis or in some other manner. *See* exhibit 1, LPSC Minutes (July 13, 1994).

Cellular services may be priced far above cost. In the absence of some form of rate base/rate of return regulation and in view of an inadequate level of competition, cellular carriers may be earning super normal profits. It appears that, rather than providing effective competition, the system of having two providers in each geographic area may simply result in consciously parallel pricing. For example, New Orleans and Baton Rouge are the two largest cellular geographic areas in Louisiana. The wireline provider in both New Orleans and Baton

Rouge is BellSouth Mobility (an affiliate of South Central Bell Telephone Company, the local exchange company). The non-wireline carrier in New Orleans is Radiofone and in Baton Rouge it is Radiofone d/b/a/ Baton Rouge Cellular Telephone Company. Although numerous service plans are offered by each company in New Orleans, the plans are very similar and the rates charged by BellSouth Mobility and Radiofone in New Orleans are virtually identical for each of the plans. The same is true for the plans offered and the rates charged by the two companies in Baton Rouge. While possible, it is highly unlikely that the cost to provide service is identical for these two companies.

Moreover, in a number of cellular territories in Louisiana, the tariffs strongly suggest that the "competing" companies are dividing the market. That is, the least expensive provider changes as usage changes. For example, Provider A may have the cheapest rates from 150 minutes to 220 minutes while Provider B may have the cheapest from 220 minutes to 450 minutes. Thus, at any usage level there is effectively only one provider available. Another problem with this type of arrangement is that a consumer is unable to make an intelligent choice as to the least cost provider unless he is able to accurately gauge his usage prior to choosing a provider. As discussed previously, once a provider is selected the consumer is virtually captive -- the consumer must either incur a substantial cancellation fee or fulfill the term of the contract before switching to a competing provider.

3. There Is No Substitute Service For Cellular

Currently, there is no substitute service for mobile cellular telephones. While technologies are rapidly developing and competitive services may be available over the next several years, none exists today. Traditional paging does not offer the range of services

provided by cellular telephones and traditional telephony lacks the range of movement that cellular service provides.

**4. Substantial Entry Barriers Still Exist In The
Cellular Market**

As previously discussed, the FCC currently permits only two cellular carriers to operate in any geographic area. This FCC-mandated restriction is a significant barrier to entry in this market. While resellers have provided additional competition in both the inter and intra-LATA toll market, in the cellular industry resellers are severely limited by the availability of excess capacity. Therefore, they currently may not provide the additional level of competition needed to make the cellular industry truly competitive. The FCC has recognized that significant barriers to entry still exist into the cellular market. *See Second Report & Order.*

**C. The LPSC Should Be Allowed To Continue Regulating The
Rates Charged By Those CMRS Providers Operating In
Louisiana.**

The LPSC should be allowed to retain the authority to regulate CMRS providers as it has in the past, including regulating their rates when necessary, until the market is better able to provide high quality service at affordable rates. Allowing the LPSC to retain this authority will not hinder competition. As demonstrated above, the LPSC's regulatory philosophy in the realm of CMRS has been characterized by deference to competition with affirmative ratemaking authority exercised only to remedy instances of extreme anticompetitive conduct or excessive rates. Moreover, the LPSC has been an able and responsible regulator and has a proven track record of attentiveness to consumer complaints.

1. The LPSC Has A Proven Track Record Of Fair And Responsible Regulation Concerning Both Rates And Other Aspects Of CMRS In Louisiana.

As discussed in section III.A., *supra*, the LPSC has actively monitored the CMRS marketplace in Louisiana and has intervened when necessary to protect Louisiana consumers and competitors. The LPSC's regulation has been characterized by fairness, reasonableness, and non-intervention to the extent possible.

a. The LPSC Is More Proximate To Both CMRS Providers And Consumers.

In large part, the LPSC's success in regulating the CMRS marketplace is attributable to the LPSC's proximity and accountability to Louisiana citizens. As a local body, the LPSC is more accessible to Louisiana consumers than is the FCC and is more familiar with the providers' representatives which often enables the LPSC to resolve disputes or complaints without formal proceedings. Conversely, dealing with a large federal agency is often intimidating to an average consumer, and the task of presenting a complaint to a federal agency raises seemingly insurmountable procedural obstacles, requires a substantial time commitment, and often involves delays in resolution that an average consumer may not be willing to undertake. Thus, many instances of excessive or discriminatory rates may go unresolved if the FCC is the sole body to whom these complaints may be addressed.

Moreover, because the Commissioners are accountable to their constituents, they have a heightened interest in addressing consumer concerns, responding to complaints, and ensuring that services are provided at affordable rates. The FCC itself has recognized that the LPSC is the appropriate body to handle customer complaints. *See, e.g.*, exhibit 12, Letter from

FCC to LPSC (Aug. 12, 1992); exhibit 13, Letter from FCC to Clifford P. Wood (Dec. 9, 1993); exhibit 14, Letter from FCC to Correspondent (June 30, 1994). While 47 U.S.C. 332(c)(3)(A) purports to leave many of the tools the LPSC used previously to handle these complaints with the LPSC by allowing the state regulatory bodies to continue regulating the "terms and conditions" of CMRS services, the LPSC will be crippled in its ability to effectively monitor the CMRS marketplace and to protect consumers without the full array of regulatory tools. In particular, the LPSC's regulatory efforts will be hampered without its most valuable tool -- its ability to intervene and regulate rates.

b. The LPSC's Regulation Of CMRS Providers Has Protected Louisiana Consumers.

In short, LPSC regulation of CMRS providers works. The LPSC has remedied a substantial number of consumer complaints and has resolved numerous disputes between consumers and providers and between providers. Section III.A., *supra*, sets forth the various types of complaints the LPSC has addressed. Moreover, when necessary the LPSC has intervened in the CMRS market aggressively to eliminate discriminatory rates, to order rate reductions and reimbursements of overcharges, and to disqualify providers from conducting business within the state when necessitated by the market's failure to properly protect consumers. Section III.A.3-7, *supra*. In many of these situations, the LPSC has worked with providers to achieve equitable results. This activity, and the results achieved, indicate that the LPSC's regulation is fair and serves to protect consumers. The LPSC should be allowed to continue regulating as it has in the past and should have the authority to alter the scope or nature of their regulatory activity if market conditions warrant a change.

2. The Rates Charged By CMRS Providers In Louisiana May Be Excessive

The rates charged by CMRS providers in Louisiana indicate that the market for CMRS is not competitive. The rate tariffs filed in Louisiana by cellular companies strongly suggest that the market is functioning as a duopoly. In some geographic regions, the rates charged by the providers are identical. In a number of areas, the rate offerings by the two providers evidence apparent market allocation. In these territories, one provider offers rate packages of 250 and 750 minutes while the other provider offers rate packages of 500 and 1000 minutes. This market allocation insulates both providers from head to head rate competition at the consumers' expense. The consumers are harmed because they are generally unable to select the plan that will provide them with the best overall value prior to entering a contract for service and at any usage point there is, effectively, only one provider. Once they are committed to a plan, they are captive; they must wait until the contract expires or incur a substantial cancellation fee. (See section III.B., *supra*, for a more complete discussion of the rate situation in Louisiana.) The potential anticompetitive abuses in the Louisiana cellular marketplace are reflected further in incidents like the Louisiana 8 situation where a provider overcharged subscribers for cellular roaming service between Baton Rouge and New Orleans. See section III.A.5, *supra*.

The examples of anticompetitive rates and practices occurring in Louisiana are not surprising given that the number of providers in the CMRS market is limited due, in part, to government controls. The FCC has limited the market for cellular services to a duopoly in each geographic territory delineated by the FCC. The lack of additional competitors and the absence of the threat of market entry may lull the two market participants into a state of

complacency whereby they charge supra-competitive rates and reap the generous profits. The *Telocator* reported that:

According to an internal FCC study, the introduction of a third cellular carrier into the marketplace could reduce service rates by as much as 25%.

"Wireless Potpourri", *Telocator* (Jan. 1994), attached hereto as exhibit 46.

In view of the anticompetitive tendencies of a duopolistic market, oversight with the authority to actively regulate is required to compensate for the lack of both active competition and entry threat. It is for these very reasons that natural monopolies have been subject to regulation.

Granted, the FCC may cease its policy of forbearance, discussed more fully at section III.C.4, *infra*, and step in to regulate rates if they are unjust, unreasonable, or discriminatory. The FCC, as a practical matter, cannot be expected to actively monitor all of the CMRS providers in the United States to ensure that they are not exploiting their duopoly status. Therefore, in states like Louisiana, in which CMRS providers may have exploited their duopoly status, the state regulators should be permitted to retain the authority to control the CMRS providers' rates until the market becomes more competitive through the availability of substitute products or FCC action to open the market further by allowing new entrants.

3. The LPSC's Regulatory Framework Is Pro-Competitive.

The LPSC has not exercised its regulatory authority over CMRS providers, including its ratemaking authority, in a fashion that would hinder competition. In fact, the LPSC's regulation of CMRS has been characterized by deference to competitive forces. The LPSC has pursued a policy of forbearance, much like the policy selected by the FCC, intervening only when necessary to correct market failures resulting from the incompletely

developed marketplace for CMRS. However, the degree to which CMRS providers' knowledge that the LPSC had authority to intervene and control rates if the rates exceeded the bounds of reasonableness deterred the imposition of excessive rates, cannot be measured. Given the certain, albeit intangible, benefit the LPSC's rate authority had in controlling the CMRS market and protecting consumers, and the lack of true competitiveness in the Louisiana CMRS market, the LPSC should be allowed to retain this valuable tool until the market's development brings it to a level of competitiveness that ensures fair rates.

A goal of Louisiana's telecommunications policy is to move toward full competition as the market develops. This goal was articulated by both providers and the regulators in the reports they filed in conjunction with their participation in the Louisiana Telecommunications Task Force ("Task Force"). The Service Providers Committee Final Report, p. 22, attached hereto as exhibit 47, states that: "As an area develops competition, public policy should rely on market forces and regulation should be phased out." This statement clearly reflects that the even the providers realize that some degree of regulation is warranted at this stage.⁶ These providers wisely have recognized that, in order to have a level playing field and to be able to compete fairly in this underdeveloped market, some level of regulation

6 These sentiments were echoed by the Louisiana Association of Radio Common Carriers and Radiofone, Inc. in filings with the LPSC in conjunction with the LPSC's investigation of the need for continued regulation of RCCs. (Docket U-17826). These carriers' primary concern with regard to deregulating RCCs was that the wireline company providing cellular service in a territory could engage in predatory pricing subsidized by its monopoly (wireline) operations. This, in turn, would drive non-wireline RCCs out of business, eliminating competition, and would reduce the availability of service in rural areas. See Testimony filed on behalf of Louisiana Association of Radio Common Carriers (Feb. 1988), attached hereto as exhibit 48; Memorandum in Opposition to Deregulation Submitted on Behalf of Radiofone, Inc., attached hereto as exhibit 49.

is required. The Task Force's Regulatory Committee concurs in the Service Providers' view that regulation is needed at this stage but, as the market becomes more competitive, regulation should decrease. The Regulatory Committee's Report, p. 14, attached hereto as exhibit 50, states: "Limited competition may justify limited flexibility, while greater competition would justify greater flexibility." *See also* exhibit 50 at pp. 13-15.

That the CMRS market is not fully competitive should be beyond dispute. In this regard, the FCC itself has stated: "The record does not support a conclusion that cellular services are fully competitive." Second Report & Order, ¶ 16, p. 8. Later in the same report, the FCC reiterated: "[T]he cellular service market is not fully competitive." Second Report & Order, ¶¶ 174-75, p. 68. Thus, it would be reasonable, in fact prudent, to allow the LPSC to continue to regulate the rates of CMRS providers in Louisiana, a demonstrably noncompetitive market, until such time as the market becomes fully competitive. The FCC's policy of favoring competition over regulation in CMRS would not be threatened by allowing the LPSC to continue regulating CMRS because the LPSC, like the FCC, has pursued a pro-competitive course.

4. The LPSC Has Been Forbearing, Like The FCC Contemplates, Because The Market Was In Its Infancy -- It Is Time For A Closer Look.

The FCC has expressed its intent to forbear from enforcing Title II in the following areas: (1) the FCC will forbear from imposing tariff filing requirements on CMRS providers; (2) the FCC will forbear from establishing market entry or exit requirements; and (3) the FCC, while not deciding to forbear, will not invoke its authority pursuant to §§ 213, 215, 218, 219, 220, and 221. *See* Second Report & Order, ¶ 16, p. 8. To justify forbearance, the FCC must make the following showing: (1) Enforcement of the provision is not necessary in

order to ensure that the charges, practices, classifications, or regulations for or in connection with that service are just and reasonable and are not unjustly or unreasonably discriminatory; (2) enforcement of the provision is not necessary for the protection of consumers; and (3) specifying such provision is consistent with the public interest. *See* 47 U.S.C. 332(c)(1)(A); Second Report & Order, ¶ 125, p. 53. The FCC determined that the CMRS market was sufficiently competitive to protect consumers. Therefore, it concluded that forbearance from Title II enforcement is appropriate. *See* Second Report & Order, ¶¶ 135-154, pp. 57-62 & ¶ 175, p. 68. Others, however, have disagreed with the FCC regarding whether the CMRS market is competitive and whether forbearance is appropriate. Second Report & Order, ¶¶ 131-32, p. 56.

The LPSC has pursued a policy that mirrors the FCC's newly adopted policy of forbearance in deference to competition. The LPSC has regulated CMRS providers by monitoring their rates and practices and taking affirmative steps only to remedy instances of discriminatory or excessive rates. A prime example of the LPSC's regulatory attitude toward CMRS is reflected in the Louisiana 8 situation. In that instance, the LPSC had not been actively controlling the rates charged by any CMRS provider. The LPSC discovered that Louisiana 8 was charging subscribers excessive rates for roaming service. To remedy the problem, the LPSC intervened and required Louisiana 8 to reduce its rates to a reasonable level, set by the LPSC, and to reimburse customers for overcharges levied by the company over a specified period of time. Similarly, the LPSC has stepped in and designated the appropriate rate to be charged a particular class of customers to remedy providers' discrimination against classes of customers in the application of corporate or governmental special rate packages. These

examples demonstrate that the regulatory policy advocated by the LPSC is very similar to that adopted by the FCC. As such, allowing the LPSC to retain rate regulatory authority over CMRS providers will not interfere with federal policy.

5. The CMRS Industry Has Experienced Rapid Growth And Now That The Industry Is More Mature The LPSC Should Be Allowed To Scrutinize It More Closely To Determine Whether Action Is Required To Correct Imperfections.

The cellular industry has experienced rapid growth in technology, subscriber numbers, and revenues since the industry's beginnings. For example, between 1992 and 1993 alone, total cellular industry revenues jumped 34.71% to \$9 billion. *See Cellular Industry Counts 13 Million Subscribers*, Cellular Telecommunications Industry Assn. (Oct. 1993), attached hereto as exhibit 51. Between December, 1988 and December, 1992, revenues for roaming services increased from \$89,331,000 to \$537,146,000. *Id.* And, the number of subscribers to cellular services grew from 2,069,441 in December, 1988 to 11,032,753 in December, 1992. *Id.* Clearly, then, the character of the market has changed drastically from the time that the LPSC first considered the manner in which it should regulate this industry. A reassessment is overdue.

Insufficient evidence has been collected by the LPSC in particular, and the industry and regulatory communities in general, regarding the degree and nature of competition in this market and the manner in which the market is managing this rapid growth. For instance, are providers taking advantage of economies of scale? If so, are any of the benefits being passed on to consumers? NCRA and the Pennsylvania, New York, and California Commissions assert that the CMRS market is not competitive, *see* Second Report & Order, ¶¶ 131-32, p. 56,

indicating that at least some parties familiar with the CMRS market have determined that this rapid growth has not resulted in increased competition. Thus, the LPSC should be allowed to retain rate regulatory authority in order to assess the level of competition in the Louisiana cellular market and to control rates, as necessary, to compensate for any discovered lack of competitiveness resulting in supra-competitive rates to consumers.

**6. The Louisiana Commission Has Instituted A
Docket To Investigate The Rates And Charges Of
Cellular Carriers**

As set forth in the amendments to the Federal Communications Act as well as in the Second Report and Order, any state commission that wants to justify rate regulation of cellular carriers bears the burden of proving that prevailing market conditions will not protect CMRS subscribers adequately from unjust and unreasonable rates or rates that are unjustly or unreasonably discriminatory. 47 U.S.C. 332(c)(3)(A)&(B); Second Report & Order, ¶ 251 *et seq.*, p. 94. Because of the number of complaints filed with the Louisiana Commission and the concerns discussed above, the Louisiana Commission has instituted an investigation into the manner in which cellular carriers are regulated in Louisiana.

The Second Report and Order sets forth those categories of evidence which the FCC deems important to determining whether state rate regulation is necessary to protect against unjust and unreasonable rates. Those categories of evidence are as follows:

1. The number of CMRS providers in the state, the types of services offered by these providers, and the period of time during which these providers have offered service in the state.
2. The number of customers of each such provider, and trends in each provider's customer base during the most recent annual period (or other reasonable

period if annual data is not available), and annual revenues and rates of return for each such provider.

3. Rate information for each CMRS provider, including trends in each provider's rates during the most recent annual period (or other reasonable period if annual data is not available).
4. An assessment of the extent to which services offered by the CMRS providers that the state proposes to regulate are substitutable for services offered by other carriers in the state.
5. Opportunities for new entrants that could offer competing services, and an analysis of existing barriers to such entry.
6. Specific allegations of fact (supported by an affidavit of a person or persons with personal knowledge) regarding anti-competitive or discriminatory practices or behavior on the part of CMRS providers in the state.
7. Evidence, information, and analysis demonstrating with particularity instances of systematic unjust and unreasonable rates, or rates that are unjustly or unreasonably discriminatory, imposed upon CMRS subscribers. Such evidence should include an examination of the relationship between rates and costs. We will consider especially probative the demonstration of a pattern of such rates, if it also is demonstrated that there is a basis for concluding that such a pattern signifies the inability of the CMRS marketplace in the state to produce reasonable rates through competitive forces.
8. Information regarding customer satisfaction or dissatisfaction with services offered by CMRS providers, including statistics and other information regarding complaints filed with the state regulatory commission.

It is precisely this type of information that the Louisiana Commission intends to examine in further detail regarding the workings of the cellular industry in Louisiana. Particularly, the Louisiana Commission will be examining the level of rates and the relationship between rates and costs. When this examination is complete, the Louisiana Commission will make a determination as to whether it believes it is necessary to make a filing pursuant to 47 U.S.C. 332(c)(3)(A). Pending the outcome of that investigation, the Louisiana Commission respectfully submits that it should be permitted to continue to regulate the cellular carriers in the manner that it has regulated since cellular services were introduced in Louisiana.

7. Louisiana Has Been Developing A Comprehensive Telecommunications Plan -- The LPSC's Regulatory Authority Is Necessary To Realize The Plan's Goals.

Louisiana telecommunications providers and their regulators, the LPSC and the Office of Telecommunications Management ("OTM"),⁷ have been collaborating as part of the Task Force for over a year toward developing a telecommunications plan for the state. The Task Force represents and reflects the LPSC's interest in local operations, local ratepayers, and the inevitable impact CMRS have on the local economy. The work of the LPSC, OTM, and providers should not be wasted by withholding rate regulatory authority from the LPSC.

The Task Force was created by Executive Order Number EWE 93-38 signed by Governor Edwards on November 10, 1993. *See* Executive Order No. EWE 93-38, attached hereto as exhibit 52. The Task Force's mission is to develop a comprehensive telecommunications plan for the state. *See* exhibit 47, Service Providers Report, 7-8. The Task

⁷ The OTM is a state agency responsible for contracting for and managing telecommunications services utilized by the state government.

Force was initiated by an association of telecommunications providers, the Louisiana Telephone Association, which approached the LPSC and Governor Edwards to take part in a state-wide planning process for the efficient and economic deployment of telecommunications services throughout Louisiana. *See* exhibit 47, Service Providers Report, 7-8.

Providers of wireless telecommunications services participated in the Task Force and published a subcommittee report in conjunction with their participation on the Service Providers Committee. *See* Wireless Committee Report, attached hereto as exhibit 53. Other industry participants include local exchange carriers, interexchange carriers, cable television providers, and value added/specialized common carriers. In addition to the Wireless Committee's Report mentioned above, the Service Providers Committee and the Regulatory Committee released reports on behalf of the Task Force containing goals and suggestions.

The Task Force was initiated because both the regulatory bodies and the telecommunications industry recognized that coordinated regulation, with a focus on competitive markets, was necessary to foster the development of this emerging industry. *See* exhibit 47, Service Providers Report, p. 22; exhibit 50, Regulatory Committee Report, p. 13-15. The Wireless Committee specifically recognized that regulation of the CMRS marketplace is needed until the market becomes more fully competitive. *See* exhibit 53, Wireless Committee Report, p. 23. In fact, the Wireless Committee recommended that Louisiana lawmakers/regulators: "Manage the transition to a competitive marketplace" by "implement[ing] policies that foster competition." *See* exhibit 53, Wireless Committee Report, p. 30.

Given this coordinated effort among traditionally opposing forces -- industry and their regulators -- and the concurrence of these two groups in the position that LPSC regulation

of the CMRS market is needed until the market becomes fully competitive, the FCC should not eradicate this alliance by stripping the LPSC of its authority over any aspect of the CMRS marketplace. The Task Force's purpose should not be thwarted and its work wasted by withholding from the LPSC, the primary regulatory body involved on the Task Force, the authority to pursue the Task Force's goals of universal service, economic development, infrastructure development, participation in the information superhighway, and managed movement toward competition through rate control if necessary. *See* exhibit 47, Service Providers Report, 5-6, 19-22; exhibit 50, Regulatory Committee Report, 1,5,10,12-15.

To complement the Task Force's work, the LPSC opened a docket to develop a telecommunications framework. *See* LPSC Minutes (Mar. 9, 1994), attached hereto as exhibit 54. The telecommunications framework will be designed to satisfy the REA's requirement that a state have in place a State Telecommunications Modernization Plan ("STMP") in order for telecommunications providers in the state to obtain low interest financing from the REA. This docket reflects the LPSC's commitment to the Task Force and supports the LPSC's need to retain regulatory authority over CMRS. The LPSC also has opened a docket to specifically address local competition issues related to the telecommunications industry. (Docket U-20883).

**8. Efficiencies And Principles Of Accountability
 Dictate That The LPSC Be Allowed to Retain
 Rate Regulatory Authority Over CMRS
 Providers.**

It would be inefficient and costly to transfer the LPSC's authority to the FCC at this time. Because the market for CMRS services in Louisiana is not mature, the LPSC Staff is compelled to devote substantial time and energy to address complaints, handle disputes, review filings, and remedy rate problems. The LPSC's Staff, however, already exercised these

responsibilities with regard to local providers in other areas within the LPSC's jurisdiction enabling them to assimilate these duties with regard to CMRS services. The Staff has adapted to managing these duties -- no new structure at the LPSC is required to extend these services to consumers. The FCC recently having received expanded responsibilities in the area of CMRS, will be forced to undergo costly staffing additions and to shift assignments to manage these new responsibilities. In the past, the FCC has recognized that the LPSC is the best party to interact with customers and to address customer concerns. *See, e.g.*, exhibit 12, Letter from FCC to LPSC (Aug. 12, 1992); exhibit 13; Letter from FCC to Clifford P. Wood (Dec. 9, 1993); exhibit 14, Letter from FCC to Correspondent (June 30, 1994). This holds true today. The non-competitive nature of the Louisiana CMRS market merits attention. The LPSC is the only body presently in a position to devote the time and energy to CMRS that is required to protect consumers. It is sensible to allow the LPSC to manage CMRS providers in Louisiana until the market becomes more competitive (which may then justify a discontinuance of the exercise of traditional ratemaking authority) or at the least, until the FCC realistically is in a position to serve Louisiana CMRS customers in the manner that they deserve.

The LPSC has obtained invaluable experience in regulating the CMRS marketplace. The LPSC has developed working relationships with the cellular and paging providers in Louisiana that enable the LPSC to resolve complaints efficiently and, more importantly, that assist the LPSC in garnering the providers' cooperation in achieving the Task Force's goals. These relationships have developed through CMRS providers' participation in Louisiana's qualification process, required tariff filings, and through working together to resolve

customer complaints. The FCC lacks these relationships, diminishing its ability to efficiently resolve problems.

As an accountable body, the LPSC is more responsive to consumer concerns than the FCC can be. This accountability, coupled with its constitutional mandate to regulate these carriers has led the LPSC to carefully monitor the practices of CMRS providers in Louisiana and has prompted them to take strong affirmative steps in response to anticompetitive or unwarranted conduct. In particular, the LPSC refers the FCC to the discussion of its resolution of the Louisiana 8 situation, *see* section III.A.5, *supra*, and its disqualification of A+ Beeper from operating in Louisiana, *see* section III.A.7, *supra*. This same attention to consumer interests cannot be expected or achieved at the FCC level, not because the FCC is disinterested but simply because its resources are insufficient to perform these functions in all 50 states. The authority to regulate rates is vital to the LPSC's ability to protect Louisiana consumers by functioning both as a regulatory tool and as a deterrent to prevent the LPSC's warnings from becoming empty threats.

Not only is the LPSC more responsive to Louisiana consumers than the FCC would be, Louisiana consumers want to interact with a local regulator that is answerable. For instance, a consumer advised the LPSC that he was unhappy that the Commission had allowed a provider to withdraw a particular service and voiced his intent to register his dissatisfaction at the polls. *See* Letter from Dorion Fleming, Jr. to LPSC (Sept. 10, 1991), attached hereto as exhibit 55. A consumer's ability to express his view of the LPSC's management of its affairs at the polls is an important means of communication for consumers who are distanced increasingly from their governmental bodies. If the LPSC is not allowed to retain ratemaking